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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6769/2014

DELHI PUBLIC LIBRARY Petitioner
Through: Mr. Yashpal Singh, Adv.

versus

THE GOVT. OF NCT OF DELHI & ANR Respondents

Through: Ms. Urvi Mohan, Adv. for
Mr. Sanjay Ghose, ASC for
GNCTD

+ W.P.(C) 4189/2015 & CM APPL.7585/2015

DELHI PUBLIC LIBRARY Petitioner
Through: Mr. Yashpal Singh, Adv.

versus

GOVT. OF NCT OF DELHI AND ANR. Respondents

Through: Ms. Urvi Mohan, Adv. for
Mr. Sanjay Ghose, ASC for
GNCTD

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

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19.08.2019

1. The awards, dated 21st July, 2014 and 24th February, 2015, passed by the learned Industrial Tribunal (hereinafter referred to as “the learned Tribunal”), which have been impugned in W.P. (C) 6769/2014 and W.P. (C) 4189/2015 respectively, are interconnected,

and arise from disputes, which are cognate in nature, between the petitioner and Respondent No. 2. These writ petitions are, therefore, being heard together, and are being disposed of *vide* this common judgment.

The Dispute

2. Respondent No. 2 joined the services of the petitioner as helper, on 11th May, 1990. His services were terminated on 19th March, 1991, against which he raised an industrial dispute, which was referred to the learned Labour Court, and decided in favour of Respondent No. 2 *vide* award dated 10th February, 1999, declaring the termination of Respondent No. 2, by the petitioner, to be illegal and, consequently, directing his reinstatement with full back wages. W.P.(C) 5175/1999, preferred thereagainst, by the petitioner, was dismissed, by this Court, *vide* judgment dated 22nd April, 2002, observing that the petitioner had failed to produce any material, to show the lack of continuous service on the part of Respondent No. 2, or that the termination of Respondent No. 2 was in accordance with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”).

3. Admittedly, Respondent No. 2 was, consequent on the above judgment, dated 22nd April, 2002, of this Court in W.P.(C) 5175/1999, reinstated, and has been in the continuous employment, of the petitioner, ever since.

4. Having thus reinstated Respondent No. 2, the petitioner proceeded, on 29th January, 2003, to issue, to Respondent No. 2, a Memo, alleging that (i) though he was absent on 2nd December, 2002, 7th December, 2002, 13th December, 2002 and 24th December, 2002, he recorded his attendance for the said date, deliberately, in order to get salary and (ii) though he was deputed for stock-taking duty at the Karol Bagh Branch of the petitioner from 16th to 19th December, 2002, he performed normal duty at New Rohtak Road deliberately, without attending to the work assigned to him. He was, therefore, directed to show cause as to why disciplinary action be not initiated against him for his “misconduct”.

5. Respondent No. 2 responded, *vide* communication dated 3rd February, 2003. With respect to the above two allegations, he submitted as under:

(i) Regarding the allegation that he had remained absent on the aforesaid dates, Respondent No. 2 submitted that he had not been absent, but that no higher officers had visited the New Rohtak Road library and it could not, therefore, be alleged that he was absent from duty on the said dates. He queried as to why, if he was actually absent, it was not so recorded in his attendance sheet. He insisted that he had recorded his attendance only on days when he was present.

(ii) Regarding the second allegation, of not attending to stock-taking duty, he submitted that he had complied with all

orders regarding stock-taking, and had attended stock-taking duty at other sites, but had not received any intimation or written order for stock-taking at the Karol Bagh Library. It was for this reason, he submitted, that he had performed his routine duties at New Rohtak Road.

6. During this time, Respondent No. 2, and Shri Dwarika Prasad, also working as a monthly paid/muster roll workman with the petitioner, raised an industrial dispute, with regard to their claim for regularisation in the services of the petitioner. The matter was referred, to the learned Tribunal, by the Government of National Capital Territory of Delhi *vide* Order dated 29th July, 2003, and was registered as I.D. No. 143/2003 (later renumbered I.D. No. 117/05), the term of reference of which read thus:

“Whether (1) Sh. Ashok Kumar, s/o Sh. Dharam Pal, & (2) Sh. Dwarika Prasad, s/o Sh. Baij Nath, C/o Delhi Labour Union, Aggarwal Bhawan, G. T. Road, Tis Hazari, Delhi-54 monthly paid/muster roll workmen are entitled to be regularised on the post of Helper in proper pay scale from 11.05.1990 and if so whether they are also entitled to wages as is admissible to their regular counterparts for their muster roll employment and if so what directions are necessary in this respect?”

7. During the pendency of the said proceedings before the learned Industrial Tribunal, a Show Cause Notice, dated 30th March, 2006, was issued to Respondent No. 2 by the petitioner, proposing to initiate disciplinary proceedings against him, and containing four Articles of Charge, of which the first Article of Charge was the allegation

contained in the Memo, dated 29th January, 2003 *supra*, already issued to Respondent No. 2.

8. Respondent No. 2 submitted his reply, to the said Show Cause Notice dated 30th March, 2006, on 12th April, 2006. This resulted in the issuance, on 19th April, 2006, of an Order, by the Deputy Director (Administration), which concluded thus:

“Therefore, it is clear from the above facts that Sh. Ashok Kumar is a dishonest, cheated and indisciplined person. Such person cannot be employed in any organisation. Hence, his service was not required in Delhi Public Library hereafter.”

9. Respondent No. 2, thereupon, moved the learned Industrial Tribunal under Section 33-A of the ID Act, alleging that his removal/termination, by the aforesaid Order, dated 19th April, 2006, was violative of Section 33 of the ID Act, having been issued without the requisite permission/leave of the learned Industrial Tribunal, before whom I.D. No 117/05, involving Respondent No. 2, was already pending. For ready reference, Sections 33(1) and (2) and 33-A of the ID Act may be reproduced thus:

“33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings. –

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall

—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman,

—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

“33-A Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings. –

Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention may, make a complaint in writing, in the prescribed manner, –

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.”

Respondent No. 2 contended, in his application, that the act of the petitioner, in disengaging his services, was by way of a reaction to the industrial dispute, initiated by Respondent No. 2 for his regularisation. This, it was further contended, amounted to an unfair labour practice, and was also violative of Section 33 of the ID Act. It was pointed out that no domestic enquiry, into the charges, on the basis whereof the petitioner had chosen to discontinue the services of Respondent No. 2, *vide* the Order dated 19th April, 2006 *supra*, had ever been conducted,

and no opportunity had been extended, to him, of being heard prior thereto.

10. The petitioner filed its written statement, before the learned Industrial Tribunal, in response to the aforesaid complaint of Respondent No. 2. Reliance was placed, in the said written statement, on the judgment of the Supreme Court *in Mahindra & Mahindra Ltd v. N. B. Narawade, (2005) 3 SCC 134*. It was further contended that daily wagers had no right for regularisation. The legality of the reference, made to the learned Tribunal, was also questioned, on the ground that the GNCTD was not the appropriate Government, competent to make the said reference.

11. The aforesaid application, under Section 33-A of the ID Act, as preferred by Respondent No. 2 before the learned Industrial Tribunal, was registered as CC. No. 28/06.

12. CC. No. 28/06 stands adjudicated, by the learned Industrial Tribunal, *vide* award dated 21st July, 2014, whereas I.D. No 117/05 was adjudicated, by the learned Industrial Tribunal, *vide* a later award, dated 24th February, 2015.

13. Both the said awards being favourable to the workman-Respondent No. 2, the petitioner has, by way of these writ petitions, chosen to assail the same. W.P.(C) 6769/2014 is directed against award dated 21st July, 2014, in CC. No. 28/06, whereas W.P.(C)

4189/2015 is directed against award, dated 24th February, 2015, in I.D. No. 117/05.

Award, dated 21st July, 2014 in CC.No. 28/06

14. In this case, the following issues were framed, *vide* order dated 25th August, 2009, as arising for consideration:

“1. Whether the management has terminated the services of the workman as alleged by him during the pendency of the industrial dispute, if so, its effect?

2. Relief.”

15. Before the learned Industrial Tribunal, the petitioner relied on *Mahindra & Mahindra Ltd (supra)* and *Secretary, State of Karnataka v. Umadevi, (2006) 4 SCC 1*, whereas the Respondent No. 2-workman relied on *Jaipur Zila Sevakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma, (2002) 2 SCC 244* and *Tops Security Ltd v. Subash Chander Jha, 2012 (191) DLT 361*.

16. Having adumbrated the submissions advanced by learned Counsel before it, the learned Tribunal proceeded to return the following observations/findings thereon:

(i) The pendency, before the learned Industrial Tribunal, of I.D. No. 117/2005, was not in dispute. This fact had also been admitted by Dr. Banwari Lal, the Director of the petitioner, who had been cited, by the petitioner, as its sole witness, RW-1, in his cross examination.

(ii) The objection, of the petitioner, to the competence of the GNCTD to refer the dispute to the learned Tribunal, was not open for consideration, as, the remedy available with the petitioner, in such a case, was to challenge the order of reference before this Court, which it had not chosen to do.

(iii) Office Order dated 19th April, 2006 *supra*, whereby the petitioner had removed Respondent No. 2 from service as a “dishonest, cheated and indisciplined person”, stood proved, by Respondent No. 2, and exhibited as Ex. CW-1/4. RW-1, when questioned in this regard, deposed that the said letter did not terminate the services of Respondent No. 2, but informed him that his services were no longer required. It had been admitted, by RW-1, that the said order, dated 19th April, 2006, found that the conduct of Respondent No. 2 was not good. He also admitted that no charge-sheet had been issued to Respondent No. 2, prior to the said Order, dated 19th April, 2006. It was apparent, therefore, that the petitioner had terminated the services of Respondent No. 2, during the pendency of the earlier industrial dispute before the learned Tribunal, on the ground of misconduct.

(iv) Inasmuch as the said alleged misconduct had no connection with the dispute forming subject matter of I.D. No. 117/2005, Section 33(1)(b) of the ID Act would not apply.

(v) However, Section 33(2)(b) of the ID Act was squarely applicable to the facts of the present case. This provision

prohibited the discharge or dismissal, of any workman, in respect of whom an industrial dispute was already pending before the learned Industrial Tribunal/Labour Court, unless the workman had been paid a month's wage and an application had been made, by the employer, to the authority before which the proceedings were pending, for approval of the action to remove the workmen from service.

(vi) Neither of these requirements had been fulfilled, by the petitioner, in the present case. Neither was a month's wage paid to Respondent No. 2, prior to the issuance of the Order, dated 19th April, 2006 *supra*, nor was any application moved, before the learned Industrial Tribunal, seeking approval of the petitioner's action of removing Respondent No. 2 from service.

(vii) Clearly, therefore, Section 33(2)(b) of the ID Act stood infringed by the petitioner.

17. Resultantly, held the learned Industrial Tribunal, the removal, of Respondent No. 2 from service, by the petitioner, was in the teeth of Section 33 of the ID Act, and Respondent No. 2 was, consequently, entitled to reinstatement in service with full back wages and consequential benefits. An award, to the said effect, was, therefore, passed.

Award, dated 24th February, 2015 in I.D. No. 117/2005

18. In this case, Respondent No. 2 contended, in his Statement of Claim before the learned Tribunal, that

(i) he had joined the services of the petitioner as helper w.e.f. 11th May, 1990,

(ii) he was being treated, by the petitioner, as a monthly paid/muster roll worker,

(iii) he was being paid wages as fixed and revised from time to time under the Minimum Wages Act, 1948, for unskilled workers,

(iv) his counterparts, doing the very same work in the employment of the petitioner were, however, being treated as regular employees and were being paid regular salary in the applicable pay scale, along with other allowances and all other benefits,

(v) by virtue of the judgment, dated 22nd April, 2002 *supra*, of this Court in W.P.(C) 5175/1999, he was in continuous employment of the petitioner since 11th May, 1990,

(vi) the duties being discharged by him were of permanent and regular nature,

(vii) he was, therefore, entitled to be regularised, with retrospective effect from the initial date when he joined the services of the petitioner, i.e. from 11th May, 1990, with all

consequential benefits including arrears of differential pay, applying the principle of equal pay for equal work.

19. Before the learned Industrial Tribunal, the petitioner contended, *per contra*, that

- (i) the claim of Respondent No. 2 was not maintainable, as it was barred by *res judicata*, in view of the award dated 10th February, 1999 *supra*,
- (ii) the petitioner was not an “industry”, within the meaning of the ID Act,
- (iii) Respondent No. 2 had been employed as a water man on daily wages for seasonal work, and not as helper, and the certificate of work, issued to him, as helper, had been issued, by the petitioner, to him, by mistake, ,
- (iv) the terms of the award, dated 10th February, 1999 *supra*, already stood complied with, by the petitioner, and
- (v) this Court had not, in its judgment dated 22nd April, 2002 in CW 5175/1999, directed regularisation of the services of Respondent No. 2.

20. Consequent on completion of pleadings by the parties, the learned Tribunal framed the following issues, on 8th November, 2011, as arising for its consideration:

- “1. Whether the cause of the workmen has been duly espoused?

2. Whether the claimant is entitled to be regularised w.e.f. 11.05.90?

3. In terms of reference.”

21. Respondent No. 2 examined himself as WW-1, and the petitioner led the evidence of Dr. Banwari Lal, its Director, as MW-1. No other witness was cited by either of the said parties.

22. On Issue 1, framed by the learned Industrial Tribunal on 8th November, 2011, the learned Tribunal found that the record revealed proper espousal, of the cause of Respondent No. 2, by the Delhi Labour Union, *vide* letter exhibited as Ex. WW-1/6. In any event, this finding, by the learned Tribunal, has not been called into question by the petitioner, in either of these writ petitions.

23. With respect to the remaining two issues, the learned Tribunal returned the following observations/findings:

(i) The order, dated 19th April, 2006 *supra*, terminating the services of Respondent No. 2, stood set aside *vide* award dated 21st July, 2014, passed by the learned Industrial Tribunal, as having been issued in violation of Section 33(2)(b) of the ID Act. The said award directed consequent reinstatement of Respondent No. 2, with full back wages. Though the award was under challenge, before this Court, in W.P.(C) 6769/2014 (which, too, this judgment proceeds to dispose of), no order of stay had been passed by this Court, in the said writ petition.

Resultantly, it was a conceded position that Respondent No. 2 was continuing to work with the petitioner.

(ii) The plea of *res judicata*, advanced by the petitioner, was devoid of substance, as the award, dated 10th February, 1999 *supra*, merely challenged the termination of Respondent No. 2 from service, and directed his reinstatement, and did not involve any question of regularisation. Indeed, the issue of regularisation could have arisen only were the dispute, which resulted in the passing of the said award, dated 10th February, 1999, were to end in favour of Respondent No. 2 – which, ultimately, it did. The issue of regularisation, therefore, having constituted no part of the dispute before the learned Industrial Tribunal in that case, the plea of *res judicata*, as advanced by the petitioner, had no legs to stand on.

(iii) The resultant factual position was that Respondent No. 2 had, to his credit, over 23 years' service with the petitioner.

(iv) In such circumstances, this Court had held, in ***Rajender Singh v. U.O.I., (2015) 1 LLJ 389 Del***, that the workman could not be continued to be retained on daily wages on muster roll basis ad infinitum, and was entitled to regularisation.

24. In view of these observations/findings, the said award, dated 24th February, 2015, held Respondent No. 2 to be entitled to be regularized, with all consequential benefits, including the regular pay scale, as was being granted to his juniors, discharging identical duties

in the service of the petitioner, with effect from the date of when the said benefits became available to such juniors.

The present writ petitions, and the rival stands

25. As has already been noted hereinabove, these writ petitions, at the instance of the petitioner-Delhi Public Library, assail the aforesaid awards, dated 21st July, 2014 and 24th February, 2015.

26. W.P. (C) 6769/2014, which is directed against the award dated 21st July, 2014, contains as many as fourteen grounds, of which the majority are in the nature of sweeping submissions, to the effect that the impugned award is “contrary to facts”, “contrary to law”, “without application of mind”, and the like. In the grounds, which contain any specific averment, by way of challenge to the impugned award, the petitioner has alleged that Respondent No. 2 “has been habitual to use filthy language not only with the male senior officers but also with the female senior officers in the Delhi Public Library”, “continuously involved in the bad activities of indiscipline and abusive behaviour against his higher officers”, “was given sufficient opportunity is to improve himself but the respondent not improve and continued to misbehave” and “has not realised his mistakes and will again do something dangerous beyond expectations”. Besides, it is sought to be averred, the Order, dated 19th April, 2006, whereby the services of Respondent No. 2 were terminated, was passed “keeping in view of the judgment of the Hon’ble Supreme Court” in *Mahindra & Mahindra Ltd (supra)*. It is also asserted, somewhat boldly, that the

learned Presiding Officer of the Industrial Tribunal “has been in its haste to pass the impugned award dated 21.07.2014, has wrongly made out a new case and has denied justice to the petitioner by not appreciating the fact that the order passed by the petitioner against the Respondent No. 2 was absolutely correct.”

27. W.P. (C) 4189/2015 is directed against the award dated 24th February, 2015. It is asserted, in the grounds urged in the said writ petition, that the learned Industrial Tribunal failed to appreciate the fact that “the second similar ID is barred by the principle of res judicata”. This writ petition, too, alleges that Respondent No. 2 was “continuously involved in the bad activities of indiscipline and abusive language against his higher officers”, and that the “order” had been passed, by the petitioner, in view of the judgment of the Supreme Court in *Mahindra and Mahindra Ltd. (supra)*. The writ petition also faults the learned Industrial Tribunal for failing to appreciate the fact that W.P.(C) 6769/2014 was pending before this Court.

28. Arguments were advanced, before this Court, by Mr. Yashpal Singh, on behalf of the petitioner, Mr. Sanjoy Ghose, learned Additional Standing Counsel on behalf of the GNCTD and Mr. Rajeev Agarwal, on behalf of the Respondent No. 2-workman.

29. On behalf of the petitioner-Delhi Public Library, Mr. Yashpal Singh essentially advanced two submissions, apart from those already canvassed in the writ petition. He sought, first, to contend that the Delhi Public Library was not an “industry”, within the meaning of the

ID Act and that, therefore, the entire proceedings, commencing from the reference of the alleged industrial dispute to the learned Industrial Tribunal, was bad for want of jurisdiction. He further placed pointed reliance on the judgment of the Supreme Court in ***Rajasthan State Road Transport Corporation v. Satya Prakash*, (2013) 9 SCC 232**, contending that the dispute in the present case was entirely covered, by the said decision, in favour of his client.

30. Arguing per contra, and supporting the findings of the learned Industrial Tribunal in both the impugned awards, Mr. Rajeev Agarwal, learned Counsel for Respondent No. 2 submitted that the reliance, by Mr. Yashpal Singh, on the judgment of the Supreme Court in ***Rajasthan SRTC v. Satya Prakash (supra)*** was completely misguided, and a bare reading of the said judgment revealed that it had been rendered in the peculiar facts of that case. Mr. Agarwal emphasised that the termination, of the services of his client, by the petitioner, was clearly in the teeth of Section 33(2)(b) of the ID Act, and that, in view of the law laid down by the Constitution Bench of the Supreme Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd v. Ram Gopal Sharma*, (2002) 2 SCC 244**, the declaration of an order of termination having been issued in violation of Section 33(2)(b) of the ID Act had to visit, in its inevitable wake, the consequence of reinstatement of the employee affected by such order. Mr. Agarwal, in fine, sought to support the impugned awards passed by the learned Industrial Tribunal, and exhorted this Court to uphold them in their entirety.

Analysis and findings

31. The award, dated 21st July, 2014, impugned in W.P.(C) 6769/2014, was passed on an application, of Respondent No. 2, preferred under Section 33-A of the ID Act. Section 33-A specifically caters to a situation where the employer contravenes the provisions of Section 33, during the pendency of proceedings before, inter alia, the Labour Court or the Industrial Tribunal. In the event of such contravention, the said provision permits the employee, aggrieved thereby, to complain, in writing, to the Labour Court, or Industrial Tribunal, “to adjudicate upon the complaint”.

32. The words “to adjudicate upon the complaint”, as contained in Section 33-A are, however, followed by the words “as if it were a dispute referred to, or pending before it, in accordance with the provisions of this Act”, and the interpretation of this caveat has been the subject matter of considerable discussion, in various decisions of the Supreme Court.

33. The earlier prevalent view, as reflected by, inter alia, the decisions in *Automobile Products of India Ltd v. Rukmaji Bala*, AIR 1955 SC 258, *Punjab National Bank Ltd v. Workmen*, AIR 1960 SC 160, *The Hindustan General Electrical Corporation Ltd v. Bishwanath Prasad*, (1971) 2 SCC 605 and *Punjab Beverages (I) Ltd v. Suresh Chand*, (1978) 2 SCC 144, was that, in view of the incorporation, by reference, of Section 10-A of the ID Act, into Section 33-A, the duty of the Labour Court, or Industrial Tribunal,

adjudicating on a complaint, under Section 33-A, would not stand discharged merely on the rendition, by it, of a finding that the order of discharge/dismissal/removal, passed against the workman in question, was violative of Section 33(1)(b) or Section 33(2)(b) of the ID Act. These decisions hold that the Labour Court, or Industrial Tribunal would, consequent to returning such a finding, have to proceed further to examine the justifiability of the order of dismissal/removal/discharge, of the workman, on merits.

34. *Automobile Products of India Ltd (supra)* opines, in para 11, thus:

“When an employer contravenes the provisions of Section 33 of the 1947 Act or of Section 22 of the 1950 Act the workmen affected thereby obviously have a grievance. That grievance is twofold. In the first place it is that the employer has taken a prejudicial action against them without the express permission in writing of the authority concerned and thereby deprived them of the salutary safeguard which the legislature has provided for their protection against victimisation. In the second place, and apart from the first grievance which may be called the statutory grievance, the workmen may also have a grievance on merits which may be of much more seriousness and gravity for them, namely, that in point of fact they have been unfairly dealt with in that their interest has actually been prejudicially affected by the highhanded act of the employer. These sections give the workmen the right to move the authority by lodging a complaint before it. This is a distinct benefit given to them, for, as we have seen, apart from these sections, the workmen have no right to refer any dispute for adjudication. This complaint is required to be made in the prescribed manner. Form DD prescribed by Rule 51-A of the Industrial Disputes (Central) Rules, 1947, framed under Section 38 of the 1947 Act, like Form E prescribed

under Section 35 of the 1950 Act, requires the complaining workmen to show in their petition of complaint not only the manner in which the alleged contravention has taken place but also the grounds on which the order or the act of the management is challenged. *This clearly indicates that the authority to whom the complaint is made is to decide both the issues, namely, (1) the fact of contravention and (2) the merits of the act or order of the employer. It is also clear that under Section 33-A of the 1947 Act the authority is to adjudicate upon the complaint "as if it were a dispute referred to or pending before it" and under Section 23 of the 1950 Act the authority is to decide the complaint "as if it were an appeal pending before it". These provisions quite clearly indicate that the jurisdiction of the authority is not only to decide whether there has been a failure on the part of the employer to obtain the permission of the authority before taking action but also to go into the merits of the complaint and grant appropriate reliefs. The extreme contention that under Section 33-A of the 1947 Act, on a finding that there has been a contravention of the provisions of Section 33, the Tribunal's duty is only to make a declaration to that effect, leaving the workmen to take such steps under the Act as they may be advised to do, has been negated by the Labour Appellate Tribunal in **Serampore Belting Mazdoor Union v. Serampore Belting Co., Ltd.** [(1951) 2 Lah LJ 341] and by the Bombay High Court in **Batuk K. Vyas v. Surat Borough Municipality** [(1952) 54 Bom LR 922] . The same principle has been accepted and applied by a Full Bench of the Labour Appellate Tribunal to a case under Section 23 of the 1950 Act in **Raj Narain v. Employers' Association of Northern India** [(1952) 1 Lah LJ 381] . We find ourselves in agreement with the construction placed upon Section 33-A of the 1947 Act and Section 23 of the 1950 Act by these decisions. In our view the scope and ambit of the jurisdiction conferred on the authority named in those sections is wider than that conferred on the criminal court by Section 31 of the 1947 Act and Section 29 of the 1950 Act. The criminal court under the two last mentioned sections is only concerned with the*

first issue hereinbefore mentioned, namely, yea or nay whether there has been a contravention of the respective provisions of the sections mentioned therein, *but the authority exercising jurisdiction under Section 33-A of the 1947 Act and Section 23 of the 1950 Act is to adjudicate upon or decide the complaint “as if it were a dispute referred to or pending before it” in the first case or “as if it were an appeal pending before it” in the second case. The authority is, therefore, enjoined to go into the merits of the act complained of under Section 33-A of the 1947 Act and Section 23 of the 1950 Act.* In this sense the jurisdiction of the authority named in these two sections is certainly wider than that of the criminal court exercising jurisdiction under the penal sections referred to above. Having regard to the scope of the enquiry under Section 33-A of the 1947 Act and Section 23 of the 1950 Act it must follow that the power of the authority to grant relief must be coextensive with its power to grant relief on a reference made to it or on an appeal brought before it, as the case may be. The provision that the authority concerned must submit its *award* to the appropriate Government and that the provisions of the respective Acts would be applicable thereto also support the view that the decision of the authority is to partake of the nature of a decision on the merits of an industrial dispute which when published by the appropriate Government will become enforceable under the respective Acts. It follows, therefore, that the authority referred to in these sections must have jurisdiction to do complete justice between the parties relating to the matters in dispute and must have power to give such relief as the nature of the case may require and as is also indicated by the prayer clause mentioned in the two Forms DD and E referred to above. In short, these two sections give to the workmen a direct right to approach the Tribunal or Appellate Tribunal for the redress of their grievance without the intervention of the appropriate Government which they did not possess before 1950 and they *provide* for speedy determination of disputes and avoid multiplicity of proceedings by giving complete relief to the workmen in relation to their grievances arising out of the action taken

by the employer in contravention of the provisions of the relevant sections. It is significant that this jurisdiction or power has been vested in the tribunal or Appellate Tribunal whose normal duty is to decide or adjudicate upon industrial disputes and not on any conciliation Officer or Board who are normally charged with the duty of bringing about settlement of disputes.”

(Emphasis supplied)

35. The rationale, guiding the view expressed in the above-extracted passage from *Automobile Products of India Ltd (supra)* is significant. The Supreme Court has proceeded on the premise that, were the Labour Court, or Industrial Tribunal not to be empowered, while exercising jurisdiction on a complaint under Section 33-A of the ID Act, to enter into the merits of the order of dismissal, discharge or removal, the workman concerned would be constrained to separately approach the Labour Court, or Industrial Tribunal, seeking reinstatement, and has, therefore, justified the entrustment of power, to the Labour Court, or Industrial Tribunal, under Section 33-A, to examine the merits of the order of dismissal/discharge or removal, on the ground that such entrustment would obviate the necessity of the workman, having secured a declaration of contravention of Section 33, by the employer, under Section 33-A, having to re-approach the Labour Court or Industrial Tribunal, for substantive relief of reinstatement, etc.

36. This rationale may, however, not survive any further, in view of the judgment of the Constitution Bench of the Supreme Court in

Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra), as would be demonstrated hereinafter, as the said decision holds, unequivocally, that, once the Labour Court, or Industrial Tribunal finds that the order of dismissal, discharge or removal from service, as passed by the employer, infracts Section 33(1)(b) or Section 33(2)(b), the employee becomes entitled, *ipso facto*, to reinstatement, without having to re-approach any authority for the said purpose.

37. Apropos Section 33-A of the ID Act, P. B. Gajendragadkar, J. (as he then was) held, in ***Punjab National Bank Ltd (supra)***, thus:

“29. This contention is, however, untenable in view of the decisions of this Court where the provisions of Section 33-A have been construed and considered, and so we must now turn to Section 33-A. This section was inserted in the Act in 1950. Before it was enacted the only remedy available to the employees against the breach of Section 33 was to raise an industrial dispute in that behalf and to move the appropriate Government for its reference to the adjudication of a tribunal under Section 10 of the Act. The trade union movement in the country complained that the remedy of asking for a reference under Section 10 involved delay and left the redress of the grievance of the employees entirely in the discretion of the appropriate Government; because even in cases of contravention of Section 33 the appropriate Government was not bound to refer the dispute under Section 10. That is why Section 33-A was enacted for making a special provision for adjudication as to whether Section 33 has been contravened. This section enables an employee aggrieved by such contravention to make a complaint in writing in the prescribed manner to the tribunal and it adds that on receipt of such complaint the tribunal shall adjudicate upon it as if it is a dispute referred to it in accordance with the provisions of the Act. It also requires the tribunal to submit its award to the appropriate Government and the provisions of the Act

shall then apply to the said award. It would thus be noticed that by this section an employee aggrieved by a wrongful order of dismissal passed against him in contravention of Section 33 is given a right to move the tribunal in redress of his grievance without having to take recourse to Section 10 of the Act.

30. After this section was thus enacted the scope of the enquiry contemplated by it became the subject-matter of controversy between the employers and the employees. This court had occasion to deal with this controversy in the case of the *Automobile Products of India Ltd. [(1955) 1 SCR 1241]*. Das, J., as he then was, who delivered the judgment of the court construed Section 33-A of the Act and the corresponding Section 23 of Act 48 of 1950, which applied to the Labour Appellate Tribunal then in existence, and observed that “the scheme of the section clearly indicates that the authority to whom the complaint is made is to decide both the issues viz. (1) the effect of contravention, and (2) the merits of the act or order of the employer”. “The provision in the section that the complaint shall be dealt with by the tribunal as if it were a dispute referred to or pending before it quite clearly indicates”, said the learned Judge, “that the jurisdiction of the authority is not only to decide whether there has been a failure on the part of the employer to obtain the permission of the authority before taking action but also to go into the merits of the complaint and grant appropriate reliefs (p. 1253)”. It was urged before this Court that in holding an enquiry under Section 33-A the tribunal's duty was only to find out whether there had been a contravention of Section 33, and if it found that there was such a contravention to make a declaration to that effect. The argument was that no further question can or should be considered in such an enquiry. This contention was, however, rejected.

31. The same question was raised before this court in *Equitable Coal Co. Ltd. v. Algu Singh [AIR 1958 SC 761]* and following the previous decision of this court in the case of the *Automobile Products of India Ltd.*

[Ludwig Teller's Labor Disputes and Collective Bargaining, Vol II, p 855] it was held that in an enquiry under Section 23 two questions fall to be considered: Is the fact of contravention of the provisions of Section 22 proved? If yes, is the order passed by the employer against the employee justified on the merits? Thus there can be no doubt that in an enquiry under Section 33-A the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of Section 33 by the employer. After such contravention is proved it would still be open to the employer to justify the impugned dismissal on the merits. That is a part of the dispute which the tribunal has to consider because the complaint made by the employee is treated as an industrial dispute and all the relevant aspects of the said dispute fall to be considered under Section 33-A. Therefore, we cannot accede to the argument that the enquiry under Section 33-A is confined only to the determination of the question as to whether the alleged contravention by the employer of the provisions of Section 33 has been proved or not.

32. In the present case the impugned orders of dismissal have given rise to an industrial dispute which has been referred to the tribunal by the appropriate Government under Section 10. There can be no doubt that if under a complaint filed under Section 33-A a tribunal has to deal not only with the question of contravention but also with the merits of the order of dismissal, the position cannot be any different when a reference is made to the tribunal like the present under Section 10. What is true about the scope of enquiry under Section 33-A is a fortiori true in the case of an enquiry under Section 10. What is referred to the tribunal under Section 10 is the industrial dispute between the Bank and its employees. The alleged contravention by the Bank of Section 33 is no doubt one of the points which the tribunal has to decide; but the decision on this question does not conclude the enquiry. The tribunal would have also to consider whether the impugned orders of dismissal are otherwise justified; and whether, in the

light of the relevant circumstances of the case, an order of reinstatement should or should not be passed. It is only after all these aspects have been considered by the tribunal that it can adequately deal with the industrial dispute referred to it and make an appropriate award.”

(Emphasis supplied)

38. Relying on the aforesaid precedent *in Punjab National Bank Ltd (supra)*, another 3-Judge bench, of the Supreme Court held, in *The Hindustan General Electrical Corporation Ltd (supra)*, thus (in para 12 of the report):

“12. The Tribunal in our view rightly refused to go into the question of the pendency of any conciliation proceeding; but, even if there was any such proceeding, it would make no difference to the result in this case. The Tribunal would still have to consider whether the employer's action was justified in the light of the decision in the *Indian Iron and Steel Co.* case. In other words, the Tribunal would have to be satisfied that the allegations, if any, about want of good faith or victimisation or unfair labour practice were baseless. The Tribunal would also have to be satisfied whether any complaint was made on that score that the enquiry was vitiated by basic error or violation of any principle of natural justice and its finding on which the order of dismissal was passed was therefore perverse or without any foundation.”

(Emphasis supplied)

39. In the context of the above-extracted passage from *The Hindustan General Electrical Corporation Ltd (supra)*, it may be noted that the principles, governing the jurisdiction of the Labour Court or the Industrial Tribunal, while adjudicating on a challenge to an order of dismissal, on the ground of misconduct, were adumbrated,

by the Supreme Court, in *Indian Iron and Steel Co Ltd v. Their Workmen*, AIR 1958 SC 130, in the following words:

“In case of dismissal on misconduct, the Tribunal does not, however, act as a Court of appeal and substitute its own judgment for that of the management. It will interfere, (i) when there is a want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and (iv) when on the materials the finding is completely baseless or perverse.”

40. *Punjab Beverages (P) Ltd (supra)* lucidly set out the legal position, as it obtained at that point of time, from the judgments already cited hereinabove, as well as other associated judicial pronouncements, in the following words:

“8. We may first examine the scope and meaning of Section 33-A and then consider what is the effect of that section on the interpretation of Section 33. Before Section 33-A was introduced in the Act by Act 48 of 1950, the only remedy available to the workman against the breach of Section 33 was to raise an industrial dispute in that behalf and to move the appropriate Government for its reference to the adjudication of a Tribunal under Section 10. The Trade Unions in the country complained that the remedy of asking for a reference under Section 10 involved delay and left the redress of the grievance of the workman entirely in the discretion of the appropriate Government, because even in cases of contravention of Section 33, the appropriate Government was not bound to refer the dispute under Section 10. That is why Section 33-A was enacted for making a special provision for adjudication as to whether Section 33 has been contravened. This section enables a workman aggrieved by such contravention to make a complaint in writing in the prescribed manner to the Tribunal and it says that on

receipt of such complaint, the Tribunal shall adjudicate upon it as if it is a dispute referred to it in accordance with the provisions of the Act. It also requires the Tribunal to submit its award to the appropriate Government and the provisions of the Act would then apply to the said award. Section 33-A thus gives to a workman aggrieved by an order of discharge or dismissal passed against him in contravention of Section 33, the right to move the Tribunal for redress of his grievance without having to take recourse to Section 10.

9. *Now, what is the scope of the inquiry under Section 33-A when a workman aggrieved by an order of discharge or dismissal passed in contravention of Section 33 makes a complaint in writing to the Tribunal under Section 33-A? This question also is not res integra and it has been decided by this Court in a number of decisions. The first case where this question came up for consideration was **Automobile Products of India Ltd. v. Rukmaji Bala**[AIR 1955 SC 258 : (1955) 1 SCR 1241 : (1955) 1 LLJ 346] where the Court was called upon to construe Section 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950 which corresponded to Section 33-A of the Act. Section 23 conferred a right on a workman aggrieved by an order of discharge or dismissal passed in contravention of Section 22 to make a complaint to the Labour Appellate Tribunal and on receiving such complaint, the Labour Appellate Tribunal was empowered to decide it as if it were an appeal pending before it. Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 was in almost identical terms as Section 33 of the Act. Das, J., who delivered the judgment of the Court, observed while construing Section 33-A of the Act and the corresponding Section 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950 that *the scheme of these sections "indicates that the authority to whom the complaint is made is to decide both the issues viz. (1) the effect of contravention, and (2) the merits of the act or order of the employer". The provisions of these two sections, said the learned Judge,**

quite clearly show “that the jurisdiction of the authority is not only to decide whether there has been a failure on the part of the employer to obtain the permission of the authority before taking action but also to go into the merits of the complaint and grant appropriate reliefs”. It was urged before the Court that in holding an inquiry under Section 33-A, the duty of the Tribunal is only to find out whether there has been a contravention of Section 33 and if it finds that there is such contravention, to make a declaration to that effect and no further question can thereafter arise for consideration in such inquiry. This contention was however, rejected.

10. The same question was again raised before this Court in *Equitable Coal Co. v. Algu Singh* [AIR 1958 SC 761 : (1958) 1 LLJ 793 : (1959-60) 17 FJR 184] and in this case, the Court, following its previous decision in *Automobile Products of India Ltd. v. Rukmaji Bala* pointed out in a very clear and lucid exposition of the subject:

“The breach of the provisions of Section 22 by the employer is in a sense a condition precedent for the exercise of the jurisdiction conferred on the Labour Appellate Tribunal by Section 23. As soon as this condition precedent is satisfied the employee is given an additional right of making the employer's conduct the subject-matter of an industrial dispute without having to follow the normal procedure laid down in the Industrial Disputes Act. In an enquiry held under Section 23, two questions fall to be considered: Is the fact of contravention by the employer of the provisions of Section 22 proved? If yes, is the order passed by the employer against the employee justified on the merits? If both these questions are answered in favour of the employee, the Appellate Tribunal would no doubt be entitled to pass an appropriate order in favour of the employee. If the first point is answered in favour of the employee, but on the second point the finding is that, on the merits the order passed by the

*employer against the employee is justified, then the breach of Section 22 proved against the employer may ordinarily be regarded as a technical breach and it may not, unless there are compelling facts in favour of the employee, justify any substantial order of compensation in favour of the employee. It is unnecessary to add that, if the first issue is answered against the employee, nothing further can be done under Section 23. What orders would meet the ends of justice in case of a technical breach of Section 22 would necessarily be a question of fact to be determined in the light of the circumstances of each case. In view of the decision of this Court in **Automobile Products of India v. Rukmaji Bala** it would be impossible to accept Mr Sen's argument that the only order which can be passed in proceedings under Section 23 is to grant a declaration that the employer has committed a breach of the provisions of Section 22. In **Atherton West & Co. Ltd. v. Suti Mill Mazdoor Union**, this Court has expressed a similar view in regard to provisions of Section 23 of the Act.”*

The same view was reiterated by this Court in **Punjab National Bank** case where Gajendragadkar, J., speaking on behalf of the Court, pointed out that

“there can be no doubt that in an enquiry under Section 33-A the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of Section 33 by the employer. After such contravention is proved it would still be open to the employer to justify the impugned dismissal on the merits. That is a part of the dispute which the tribunal has to consider because the complaint made by the employee is treated as an industrial dispute and all the relevant aspects of the said dispute fall to be considered under Section 33-A. Therefore, we cannot accede to the argument that the enquiry under Section 33-

A is confined only to the determination of the question as to whether the alleged contravention by the employer of the provisions of Section 33 has been proved or not.”

11. It will, therefore, be seen that the *first issue which is required to be decided in a complaint filed by an aggrieved workman under Section 33-A is whether the order of discharge or dismissal made by the employer is in contravention of Section 33.* The foundation of the complaint under Section 33-A is contravention of Section 33 and *if the workman is unable to show that the employer has contravened Section 33 in making the order of discharge or dismissal, the complaint would be liable to be rejected. But if the contravention of Section 33 is established, the next question would be whether the order of discharge or dismissal passed by the employer is justified on merits. The Tribunal would have to go into this question and decide whether, on the merits, the order of discharge or dismissal passed by the employer is justified and if it is, the Tribunal would sustain the order, treating the breach of Section 33 as a mere technical breach.* Since, in such a case, the original order of discharge or dismissal would stand justified, it would not be open to the Tribunal, unless there are compelling circumstances, to make any substantial order of compensation in favour of the workman. In fact in ***Equitable Coal Co.*** case an order of compensation made by the Tribunal in favour of the workman was reversed by this Court. The Tribunal would have to consider all the aspects of the case and ultimately what order would meet the ends of justice would necessarily have to be determined in the light of the circumstances of the case. But *this much is clear that mere contravention of Section 33 by the employer will not entitle the workman to an order of reinstatement, because inquiry under Section 33-A is not confined only to the determination of the question as to whether the employer has contravened Section 33, but even if such contravention is proved, the Tribunal has*

to go further and deal also with the merits of the order of discharge or dismissal.

12. *Now, if the effect of contravention of Section 33 were to make the order of discharge or dismissal void and inoperative, the workman would straightway be entitled to an order of reinstatement as soon as he establishes in the complaint made by him under Section 33-A that the employer has contravened Section 33 in making the order of discharge or dismissal. There would be no need to go into the further question whether the order of discharge or dismissal is justified on the merits. It is difficult to imagine how the law can permit an order of discharge or dismissal which is void and inoperative to be justified on the merits. There can be no question of justification on merits of an order of discharge or dismissal which is found to be null and void. The very fact that even after the contravention of Section 33 is proved, the Tribunal is required to go into the further question whether the order of discharge or dismissal passed by the employer is justified on the merits, clearly indicates that the order of discharge is not rendered void and inoperative by such contravention. It is interesting to note that Gajendragadkar, J., speaking on behalf of the Court in **Equitable Coal Co. case** characterised the breach of Section 33 as a technical breach not having any invalidating consequence on the order of discharge or dismissal. If the scope of the inquiry under Section 33-A is what it has been held to be in the decisions in **Automobile Products of India, Equitable Coal Co., and Punjab National Bank cases**, the conclusion must inevitably follow that the contravention of Section 33 does not render the order of discharge or dismissal void and of no effect.*

13. *It is also significant to note that if the contravention of Section 33 were construed as having an invalidating effect on the order of discharge or dismissal, Section 33-A would be rendered meaningless and futile, because in that event, the workman would invariably*

prefer to make an application under Section 33-C(2) for determination and payment of the wages due to him on the basis that he continues to be in service. If the workman files a complaint under Section 33-A, he would not be entitled to succeed merely by showing that there is contravention of Section 33 and the question whether the order of discharge or dismissal is justified on the merits would be gone into by the Tribunal and if, on the merits, it is found to be justified, it would be sustained as valid despite contravention of Section 33, but if, on the other hand, instead of proceeding under Section 33-A, he makes an application under Section 33-C(2), it would be enough for him to show contravention of Section 33 and he would then be entitled to claim wages on the basis that he continues in service. Another consequence which would arise on this interpretation would be that if the workman files a complaint under Section 33-A, the employer would have an opportunity of justifying the order of discharge or dismissal on merits, but if the workman proceeds under Section 33-C(2), the employer would have no such opportunity. Whether the employer should be able to justify the order of discharge or dismissal on merits would depend upon what remedy is pursued by the workman, whether under Section 33-A or under Section 33-C(2). Such a highly anomalous result could never have been intended by the legislature. If such an interpretation were accepted, no workman would file a complaint under Section 33-A, but he would always proceed under Section 33-C(2) and Section 33-A would be reduced to futility. It is, therefore, impossible to accept the argument that the contravention of Section 33 renders the order of discharge or dismissal void and inoperative and if that be so, the only remedy available to the workman for challenging the order of discharge or dismissal is that provided under Section 33-A, apart of course from the remedy under Section 10, and he cannot maintain an application under Section 33-C(2) for determination and payment of wages on the basis that he continues to be in service. The workman can proceed under Section 33-C(2) only after the Tribunal has adjudicated, on a complaint under Section 33-A or on a

reference under Section 10, that the order of discharge or dismissal passed by the employer was not justified and has set aside that order and reinstated the workman.

14. *It was urged on behalf of the workman that if this view were taken, it would rob the workman of the protection afforded to him under Section 33 and the object and purpose of that section would be defeated because the employer would then, with impunity, discharge or dismiss workman without complying with the requirements of Section 33. But we do not think this apprehension of the workman is well-founded. If the employer contravenes the provisions of Section 33 and discharges or dismisses a workman without obtaining permission or approval of the Tribunal, he would render himself liable to punishment under Section 31(1) and this punishment can extend even to imprisonment. Moreover, the aggrieved workman would not only have the remedy of moving the appropriate Government for making a reference under Section 10, but he would also be entitled to make a complaint to the Tribunal under Section 33-A and on such reference or complaint, the order of discharge or dismissal would be liable to be subjected to a much greater scrutiny than what would be available before a Tribunal exercising the limited jurisdiction conferred under Section 33. The workman is thus not left without remedy, though, according to the trade union movement, the remedy provided under Sections 31, 10 and 33A may not be as adequate as the workman might wish it to be. It is entirely a matter of legislative policy to decide what consequences should flow from contravention of a statutory provision and what remedy should be provided to an aggrieved workman in case of such contravention.”*

(Emphasis supplied)

41. A plain reading of the passages, extracted from the judgments cited hereinabove, make it apparent that the prevalent legal position, as it existed till the decision in ***Punjab Beverages (P) Ltd (supra)*** was

that, while adjudicating on an application, of a workman, preferred under Section 33-A of the ID Act and challenging an order dismissing, discharging or removing him from service, the Labour Court, or Industrial Tribunal would first have to decide whether the order of discharge/dismissal/removal from service infringed, in any way, Section 33 (1) or 33 (2), of the ID Act. If the answer, to this query, were in the negative, the complaint of the workman would necessarily have to fail. If, however, the answer to this query were in the affirmative, the Labour Court, or Industrial Tribunal would, thereafter, have to proceed to examine the justifiability of the decision, of the employer, to dismiss, discharge or remove the workman, on merits – which would, necessarily, include examination of whether the said decision was imperilled on any other ground, such as violation of the principles of natural justice, and the like. It was only if the decision, on this second aspect, too, were to be in favour of the workman, that the workman could claim a right to reinstatement in service, with attendant benefits.

42. A somewhat divergent view was, however, expressed by the Constitution Bench in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd (supra)*, though the said decision did not address the interplay of Section 33-A and Section 33, of the ID Act, as directly as the decisions, cited hereinbefore, did. The reference to the Constitution Bench, which stood adjudicated by this judgment, arose from a perceived difference, in views, between two 3-Judge benches of the Supreme Court, in *Strawboard Manufacturing Co. v. Govind, AIR 1962 SCC 1500* and *Tata Iron and Steel Co Ltd v. S. N. Modak, AIR*

1966 SC 380, on the one hand, and in ***Punjab Beverages Ltd (supra)***, on the other. The said difference in views was noticed, by the Constitution Bench, in para 3 of its judgment, in the following words:

“The two Benches consisting of three learned Judges in (1) ***Strawboard Mfg. Co. v. Govind* [1962 Supp (3) SCR 618 : AIR 1962 SC 1500]** and (2) ***Tata Iron & Steel Co. Ltd. v. S.N. Modak* [AIR 1966 SC 380 : (1965) 3 SCR 411]** have taken the view that if the approval is not granted under Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short “the Act”), the order of dismissal becomes ineffective from the date it was passed and, therefore, the employee becomes entitled to wages from the date of dismissal to the date of disapproval of the application. Another Bench of three learned Judges in ***Punjab Beverages (P) Ltd. v. Suresh Chand* [(1978) 2 SCC 144 : 1978 SCC (L&S) 165 : (1978) 3 SCR 370]** has expressed the contrary view that non-approval of the order of dismissal or failure to make application under Section 33(2)(b) would not render the order of dismissal inoperative; failure to apply for approval under Section 33(2)(b) would only render the employer liable to punishment under Section 31 of the Act and the remedy of the employee is either by way of a complaint under Section 33-A or by way of a reference under Section 10(1)(d) of the Act.”

In the process of crystallising the views of the various three-Judge benches of the Supreme Court, the divergence among which had led to the necessity of referring the matter to the Constitution Bench, the Supreme Court clearly enumerated the various principles set out in its earlier decision in ***Punjab Beverages Ltd (supra)***, including the principle that, if the contravention of Section 33 of the ID Act, were to be treated as invalidating the order of dismissal/discharge/removal from service, Section 33-A would be “rendered meaningless and futile”. Having done so, however, the Supreme Court proceeded, first,

to hold, unequivocally, that contravention of Section 33(2)(b) of the ID Act rendered, *ipso facto*, the order of discharge/dismissal/removal from service a nullity and void *ab initio*, and entitled the workman, consequently, to reinstatement in service without having to litigate further and, thereafter, to overrule the decision in ***Punjab Beverages (supra)***. Paras 13, 14 and 18 of the report may be reproduced, in this context, thus:

“13. The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further, any employer who contravenes the provisions of Section 33 invites a punishment under Section 31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs 1000 or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in another way, *the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section*

33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them is already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman.

14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if the order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of the employer and employee from the date of his dismissal or discharge but *that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If*

approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33-A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33-A and that till such time he should suffer misery of unemployment in spite of the statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33-A would be meaningless and futile. The said section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.

18. In view of what is stated above, we respectfully agree with and endorse the view taken in the case of

Strawboard [1962 Supp (3) SCR 618 : AIR 1962 SC 1500] and *Tata Iron & Steel Co.* [AIR 1966 SC 380 : (1965) 3 SCR 411] and further state that the view expressed in *Punjab Beverages* [(1978) 2 SCC 144 : 1978 SCC (L&S) 165 : (1978) 3 SCR 370] on the question is not the correct view. The question raised in the beginning of this judgment is answered accordingly.”

(Emphasis supplied)

43. The decision of the Constitution Bench in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd (supra)*, therefore, holds that an order of dismissal, discharge or removal from service, which does not conform to the mandate of Section 33(2)(b) of the ID Act, which includes, inter alia, the requirement of obtaining the approval of the Labour Court or Industrial Tribunal, before whom the earlier dispute, involving the same workman, is pending, stands vitiated *ab initio*, and the workman becomes entitled to reinstatement, *ipso facto*, in service, with no separate order, by the Labour Court or Industrial Tribunal, being required therefor. Apropos Section 33-A of the ID Act, the observation, in its earlier decision in *Punjab Beverages Ltd (supra)*, to the effect that, if such an interpretation were to be extended, Section 33-A of the ID Act would be rendered meaningless, stands overruled, by the Constitution Bench, on the reasoning that Section 33-A of the ID Act would apply where approval were granted, by the Labour Court or Industrial Tribunal, to the decision to discharge/remove/dismiss the workman, in which case it would be open to the workman to complain against the grant of such approval, by removing an application under Section 33-A of the ID Act.

44. It would seem, therefore, that the judgment of the Constitution Bench in *Jaipur Zila Sehakari Bhoomi Vikas Bank Ltd (supra)*, seemingly does away with the jurisdiction of any authority, including the Labour Court or Industrial Tribunal, to embark on any further enquiry, once the order of discharge/removal/dismissal from service was found to have been issued in violation of the mandate of Section 33(2)(b) of the ID Act.

45. Having said so, it merits reiteration that the judgment of the Constitution Bench, in *Jaipur Zila Sehakari Bhoomi Vikas Bank Ltd (supra)*, holistically read, cannot be said to have addressed, directly or indirectly, the exact scope of enquiry, by the industrial adjudicator, while dealing with a complaint under Section 33-A of the ID Act. The specific finding, by the decisions cited hereinabove (before *Jaipur Zila Sehakari Bhoomi Vikas Bank Ltd (supra)*), to the effect that the Labour Court, or Industrial Tribunal, adjudicating a complaint under Section 33-A of the ID Act, cannot rest content by holding that the order of discharge/dismissal/removal was passed without obtaining the requisite approval under Section 33(2)(b), but has, necessarily, to proceed further to examine the merits of the case, and the sustainability, otherwise, of the order of discharge /dismissal/removal from service, did not, therefore, fall for specific consideration before the Constitution Bench.

46. The position in law, as earlier enunciated in *Automobile Products of India Ltd (supra)*, *Punjab National Bank Ltd (supra)*, *The Hindustan General Electrical Corporation Ltd (supra)* and

Punjab Beverages (I) Ltd (supra), stands reiterated in two recent decisions of the Supreme Court, in *Karur Vysya Bank Ltd v. S. Balakrishnan*, (2016) 12 SCC 221 and *Managing Director, North East Karnataka Road Transport Corporation v. Shivasharanappa*, (2017) 16 SCC 540.

47. The award of the learned Industrial Tribunal, which led to the workman moving the High Court of Madras, thereagainst and, consequently, to further appeal, on the instance of the Management, before the Supreme Court in *Karur Vysya Bank Ltd (supra)*, was passed on an application, of the workman, under Section 33-A of the ID Act. The workman Balakrishnan was dismissed from service, consequent to an enquiry. As, at the time, and another industrial reference, involving Balakrishnan, was pending before the learned Industrial Tribunal, and the order dismissing him from service had been passed, by the Management, without obtaining the requisite approval under Section 33(2)(b) of the ID Act, Balakrishnan moved the Industrial Tribunal by way of a complaint under Section 33-A. The Industrial Tribunal, treating the complaint as a reference under Section 10 of the ID Act, went into the issues on merits. Though the Industrial Tribunal found the manner in which the enquiry had been conducted to be fair and proper, it held, nevertheless, that the evidence on record did not warrant the conclusions arrived at, therein, and did not bring the charge, against the workman, home to him. Accordingly, the Industrial Tribunal passed an award in favour of the workman, holding his dismissal to be unjustified. This award was assailed, by the Bank, before the High Court of Madras, on the ground that the Industrial

Tribunal had converted itself into a court of appeal against the findings of the domestic enquiry, which was impermissible in law. The learned Single Judge of the High Court, instead of returning any findings on this aspect of the matter, affirmed the award of the Industrial Tribunal on an entirely different ground, i.e., that no application, seeking approval of the Industrial Tribunal under Section 33(2)(b) of the ID Act, had been preferred by the Bank, and that this lapse rendered the order of dismissal of the services of Balakrishnan completely void. This decision, of the learned Single Judge, was upheld by the Division Bench of the High Court in writ appeal, resulting in the Bank petitioning the Supreme Court, under Article 136 of the Constitution of India.

48. The Supreme Court held, first, that the Industrial Tribunal had erred in converting itself into a court of appeal, against the decision arrived at, in the domestic enquiry held against the workman. It was emphasised, relying on *Pure Drinks (P) Ltd v. Kiran Singh Maungatt, (1961) 2 LLJ 99 (SC)*, that the industrial adjudicator could not sit in appeal over the decision of the competent authority in the domestic enquiry held against the workman. In view thereof, it was held that the award, passed by the Industrial Tribunal, in favour of Balakrishnan, could not sustain.

49. The Supreme Court proceeded, thereafter, to examine the scope of jurisdiction of the Industrial Tribunal, under Section 33-A of the ID Act. Paragraphs 10 and 11 of the report, to the extent they are relevant, may be reproduced as under:

“10. *Section 33-A of the Act enjoins upon the industrial adjudicator a twin duty. The first is to find out as to whether the employer has contravened the provisions of Section 33 [in the present case by not filing an application seeking approval under Section 33(2)(b) of the Act]. However, a finding on the above question would not be conclusive of the matter and the industrial adjudicator is required to answer the further question as to whether the dismissal or such other punishment as may have been imposed on the workman is justified in law.* The issue of sustainability of the punishment imposed naturally has to be decided within the contours of the reference jurisdiction as indicated above. That Section 33-A of the Act enjoins upon the industrial adjudicator the aforesaid twin duties is once again clear from a recent pronouncement of this Court in ***Rajasthan SRTC v. Satya Prakash, (2013) 9 SCC 232***, para 23 wherein this Court had the occasion to consider the long line of decisions taking the said view eventually culminating in what had been recorded in para 23 of the decision in ***Rajasthan SRTC*** which is to the following effect: (SCC p. 243, para 23)

“23. In the present case, the Tribunal accepted that during this very short span of service as a daily wager the respondent had committed the misconduct which had been duly proved. Having held so, the Tribunal was expected to dismiss the complaint filed by the respondent. It could not have passed the order of reinstatement with continuity in service in favour of the respondent on the basis that initially the appellant had committed a breach of Section 33(2)(b) of the Act. It is true that the appellant had not applied for the necessary approval as required under that section. That is why the complaint was filed by the respondent under Section 33-A of the Act. That complaint having been filed, it was adjudicated like a reference as required by the statute. The same having been done, and the misconduct having been held to have been proved, now there is no question

to hold that the termination shall still continue to be void and inoperative. The de jure relationship of employer and employee would come to an end with effect from the date of the order of dismissal passed by the appellant. In the facts of the present case, when the respondent had indulged in a misconduct within a very short span of service which had been duly proved, there was no occasion to pass the award of reinstatement with continuity in service. The learned Single Judge of the High Court as well as the Division Bench have fallen in the same error in upholding the order of the Tribunal.”

11. *Admittedly, in the present case, the High Court did not consider the second issue that was incumbent upon it in the exercise of jurisdiction under Section 33-A of the Act. Having taken upon ourselves the burden of deciding the said issue we have already indicated our view that the award in the present case cannot merit our acceptance being in exercise of jurisdiction not vested in the Tribunal by the provisions of the Act. Once the Tribunal had reached the conclusion that the domestic enquiry held against the workman was fair and proper no further scrutiny or investigation of the correctness of the findings recorded could have been made unless the said findings disclosed perversity. The exercise undertaken by the learned Tribunal was, therefore, akin to an exercise performed in the appellate jurisdiction which the learned Tribunal was not conferred by the provisions of the Act. We, therefore, allow the appeal; set aside the award in question as well as the orders of the High Court which would amount to affirming the order of punishment imposed by the appellant Bank on the respondent workman.”*

(Emphasis supplied)

50. The Supreme Court proceeded, towards the conclusion of its judgment, to record the following significant observations (in para 13 of the report), regarding the interplay between Section 33(2)(b) and Section 33-A, of the ID Act, though no conclusive ratio could be said to emanate therefrom:

“The second issue that we had occasion to deal with in the course of the debates that had taken place on the issues/questions arising in the present case is with regard to what we perceive is a dichotomy between the provisions contained in Section 33(2)(b) and Section 33-A of the Act. In this regard, we take notice of the fact that the employer who does not carry out his/its statutory obligation under Section 33(2)(b) and yet prevents the workman from working and earning his wages virtually gets the benefit of an adjudication that the workman has been compelled to undertake in default of the statutory obligation on the part of the employer. The jurisdiction under Section 33(2)(b) is bound to be and in fact is narrower than the reference jurisdiction under Section 33-A. It is common experience that litigations including industrial references in this country have the tendency to remain pending beyond necessary and acceptable limits. In such a situation, can the workman be made to suffer by being made to stay away from work despite the lapse on the part of the Management in moving the industrial adjudicator for approval under Section 33(2)(b) of the Act. In other words, does he have to await the outcome of his complaint under Section 33-A which itself is to be treated as a reference under Section 10. The power of the Industrial Court to pass interim orders is hardly an answer. Our anxiety in this regard is aggravated by the fact that the present position in law is proposed to be extended in the proposed Labour Code on the Industrial Relations Bill, 2015 which contemplates “revision of the existing labour law”. We, therefore, had thought it proper to request either the learned Attorney General for India or the learned Solicitor General of India to appear before the Court and to assist us on the issue. The Court

acknowledges the assistance rendered by both the learned Attorney General for India and the Solicitor General of India who have appeared in Court. The learned Attorney General for India has assured the Court that the matter will receive the attention of the highest authorities of the State. We, therefore, leave the matter to the wise decision of the executive and legislative arm of the State and end the issue on the above note.”

51. Though, having tantalisingly posed for consideration, in the above extracted paragraph, the question of whether the default, on the part of the employer, in dismissing/removing the workman, in violation of Section 33(2)(b) of the ID Act, could result in a windfall in favour of the employer, by compelling the workman to invoke Section 33-A and subject himself to the rigours of the adjudicatory process contemplated thereunder, the Supreme Court has not directly answered the issue, but has expressed its concern therein, leaving the matter to be addressed in the proposed Labour Code on the Industrial Relations Bill, 2015, which contemplated revision of the existing labour law. Unfortunately, the said Labour Code continues to languish at the pre-legislative consultative process, four years after it was framed. This is an entirely unacceptable situation, especially given the hope expressed by the Supreme Court in *Karur Vysya Bank Ltd (supra)*, and the assurances tendered by the highest law officers of the country in that regard. This Court can, however, do no better, on this issue, than to respectfully reiterate the concern expressed by the Hon’ble Supreme Court, and hope that the concerned governmental authorities would address the issue with the immediacy it deserves.

52. Be that as it may, the view expressed in *Karur Vysya Bank Ltd (supra)* was reiterated by a 3-judge bench of the Supreme Court in *Managing Director, North-East Karnataka Road Transport Corporation (supra)*. In that case, too, the respondent-workman Shivasharanappa was subjected to a domestic enquiry, on the charge of obtaining employment on the basis of fabricated qualification documents, resulting in a finding adverse to Shivasharanappa. Before the Labour Court, an issue was raised, regarding the validity of the proceedings in the domestic enquiry, in response to which the petitioner-Management requested for permission to lead evidence, which was allowed. The Labour Court held, *vide* its award dated 25th May, 2011, that the charge of obtaining employment by producing fabricated documents had convincingly been brought home to Shivasharanappa and that, as this act amounted to grave misconduct, no occasion for interference, with the order dismissing him from service, could be said to exist. Shivasharanappa petitioned the High Court. A learned Single Judge of the High Court took the view that, as, at the time of passing of the order dismissing Shivasharanappa from service, another proceeding, under the ID Act, involving him, was pending, prior approval, before dismissing him from service, was required to be taken by the Management, under Section 33(2)(b) of the ID Act and that, as no such prior approval had been taken, the dismissal of Shivasharanappa was void *ab initio*. The said decision of the learned Single Judge was upheld by the Division Bench of the High Court in appeal, resulting in the Management moving the Supreme Court, under Article 136 of the Constitution of India. The Supreme Court, relying on its earlier decision in *Karur Vysya Bank*

Ltd (supra), held that the High Court was not justified in interfering with the punishment awarded to Shivasharanappa merely on the ground that prior approval, under Section 33(2)(b) of the ID Act, had not been taken, before dismissing Shivasharanappa from service. The High Court, it was held, had necessarily to adjudicate on the validity of the order dismissing Shivasharanappa from service. This aspect, of the award passed by the Labour Court, not having been made subject matter of challenge, by Shivasharanappa, before the High Court, the Supreme Court set aside the judgment of the High Court and restored the award, dated 25 May 2011 *supra*, of the Labour Court.

The Upshot

53. The position that emerges from the above decisions, especially in view of the most recent expostulation of the law, by the Supreme Court in *Karur Vysya Bank Ltd (supra)* and *Managing Director, North-East Karnataka Road Transport Corporation (supra)*, is that, while adjudicating on a complaint, under Section 33-A, filed by the workman, the Labour Court, or the Industrial Tribunal, has necessarily to follow a two-step process, firstly examining whether the Management had acted in compliance with Section 33 and, thereafter, in the event of the answer to the first issue being in the negative, whether the charges against the workman had illegally and validly been brought home to him, in the proceedings or enquiry, or otherwise. (It may be noted, here, that, though the recital of facts, in *Managing Director, North-East Karnataka Road Transport Corporation (supra)*, does not disclose, clearly, whether the workman

had moved the High Court under Section 10-A, or under Section 33-A, of the ID Act, *Karur Vysya Bank Ltd (supra)* was, clearly, a case arising from a complaint, by the workman, under the latter provision.)

54. *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd (supra)*, unquestionably, did cause a slight ripple in the stream; that ripple has, however, died down, and the waters are, at least for the nonce, still once again.

55. The reliance, of Mr. Yashpal Singh, on *Rajasthan State Road Transport Corporation v. Satya Prakash (supra)* is also, in the circumstances, unquestionably well taken; indeed, the said decision was also relied upon, by the Supreme Court, in *Managing Director, North-East Karnataka Road Transport Corporation (supra)*, with the observation that it endorsed the same view as had been taken in *Karur Vysya Bank Ltd (supra)*.

Application of the above law to the facts of the present case

56. Applying the above law to the facts of the present case, it is clear that the award, dated 21st July, 2014 *supra*, passed by the learned Industrial Tribunal, on the complaint, of Respondent No. 2, under Section 33-A of the ID Act, cannot sustain, to the extent it directed reinstatement, of Respondent No. 2 on the sole ground that his termination was violative of Section 33(2)(b) of the ID Act.

57. The facts reveal that a Show Cause Notice, dated 30th March, 2006, was issued to Respondent No. 2, to which he responded, on 12th April, 2006. Before the learned Industrial Tribunal, Respondent No. 2 was permitted to lead his own evidence as well as to cross examine the witness who deposed on behalf of the petitioner-management. In these circumstances, the issue of whether the findings, against Respondent No. 2, as contained in the Order, dated 19th April, 2006 *supra*, issued by the Deputy Director (Admn.) in the office of the petitioner, can, or cannot, sustain, would be an issue which would ideally be required to be addressed, in the first instance, by the Industrial Tribunal. Inasmuch as the learned Industrial Tribunal had, earlier, approached the matter on the premise that non-compliance, with the requirement of obtaining prior approval before passing of the Order, dated 19th April, 2006 *supra*, as required by Section 33(2)(b) of the ID Act, was sufficient to declare the said decision to be illegal, and to reinstate Respondent No. 2 in service, rather than the manner in which it would have proceeded, had the complaint been treated as a reference, under Section 10-A of the ID Act, it would be apposite to allow the learned Tribunal to consider permitting the petitioner, as well as Respondent No. 2, to lead fresh evidence, or further evidence, should either or both of them so seek.

Award, dated 24th February, 2015, in W.P.(C) 4189/2015

58. At the outset, it may be noted that there is no substance, whatsoever, in the plea of *res judicata*, as advanced by the petitioner, before the learned Industrial Tribunal and before this Court. The

earlier award, dated 10th February, 1999, did not deal with the issue of regularisation of Respondent No. 2 at all, and only addressed his entitlement to reinstatement. As such, the finding, of the learned Tribunal, that the claim, of Respondent No. 2, for regularisation, was not hit by *res judicata*, is unexceptionable.

59. On merits, too, the writ petition, of the petitioner, does not advance a single ground, to question the correctness of the decision, of the learned Industrial Tribunal, to direct regularisation of the services of Respondent No. 2, w.e.f. the date of regularisation of his juniors. The petitioner has chosen merely to reproduce, verbatim, the grounds urged in W.P.(C) 6769/2014. A reading of the award, dated 24th February, 2015, of the learned Industrial Tribunal, forming subject matter of W.P.(C) 4189/2015, reveals that the regularisation of Respondent No. 2 has been directed on the ground that he has been continuously working with the petitioner since 19th March, 1991 and has, therefore, to his credit, more than 23 years of service. Reliance, in order to issue the said direction, has also been placed, by the learned Industrial Tribunal, on the judgment of this Court in ***Rajender Singh (supra)***. Even otherwise, it is well settled that persons cannot be continued, on daily wage or muster roll basis, for years at a stretch, and the very continuance, of Respondent No. 2 belies the stand, of the petitioner, that his services were not required.

60. Employment of workmen as *badlis*, casuals or temporaries, and continuing them as such for years, with the object of depriving them of the status and privileges of permanent workmen, is a specified

“unfair labour practice”, in the Fifth Schedule to the ID Act, and may legitimately, therefore, invite criminal action against the petitioner. In any event, the facts, as recited in para 18 of the award, dated 24th February, 2015, the learned Industrial Tribunal, not having been traversed in the writ petition, have to be treated as accepted. No occasion, therefore, arises, whatsoever, for this Court, in exercise of its certiorari jurisdiction, under Article 226 of the Constitution of India, to interfere therewith.

61. Indeed, no specific submissions were even advanced, in court, by learned counsel for the petitioner, by way of challenge to the award dated 24th February, 2015, learned Counsel essentially submitting that the learned Industrial Tribunal ought not to have passed the said award, directing regularisation of Respondent No. 2 even while W.P.(C) 6769/2014 was pending before this Court. I do not find any merit in the said submission. The issue of regularisation is a distinct issue, and, inasmuch as the learned Industrial Tribunal has directed such regularisation w.e.f. the date of regularisation of the juniors of Respondent No. 2, with back wages, I do not find any infirmity in the learned Tribunal having proceeded, without waiting for the outcome of W.P.(C) 6769/2014.

62. Were the petitioner to be of the view that the adjudication of I.D. No. 117/05 ought to have been kept in abeyance, awaiting the outcome of W.P.(C) 6769/2014, it was for the petitioner to have approached this Court, and sought such a relief. Not having done so,

the petitioner cannot, at this late stage, possibly be allowed to ventilate such a grievance.

63. The award, dated 24th February, 2015, of the learned Industrial Tribunal, in I.D. No. 117/2005 deserves, therefore, to be upheld in toto.

Conclusion

64. Resultantly, these writ petitions are disposed of in the following terms:

(i) W.P.(C) 6769/2014 is partly allowed. The finding, of the learned Industrial Tribunal, regarding non-compliance, by the petitioner, with the mandate of Section 33(2)(b) of the Industrial Disputes Act, 1947, is upheld. However, the matter is remanded to the learned Industrial Tribunal to consider the sustainability, or otherwise, of the Order, dated 19th April, 2006 *supra*, whereby it was directed that the services of Respondent No. 2 were no longer required. In so doing, the parties would be at liberty to apply, to the learned Tribunal, for permission to lead fresh, or additional, evidence and, if such application is made, it would be considered by the learned Industrial Tribunal on its own merits. The learned Industrial Tribunal is directed to conclude the *de novo* proceedings, in terms of this direction, as expeditiously as possible, and preferably within a period of six months from the date of presentation, before it, of a certified copy of this judgment.

(ii) W.P.(C) 4189/2015 is dismissed.

(iii) The petitioner is directed to disburse the benefits, which enure to Respondent No. 2, in terms of this judgment, within a period of 4 weeks from the date of presentation, before it, of a certified copy thereof.

65. There shall be no order as to costs.

AUGUST 19, 2019
HJ

C. HARI SHANKAR, J



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